

9. The Resellers claim that the cellular market is not "fully competitive". However, perfect competition is the incorrect standard and cannot occur in cellular service markets because of limited spectrum. It is important, however, to establish the operative question in discussing regulatory goals. While the presence of a duopoly situation for wholesale service, as established by the FCC, and cellular technology, rules out the market structure of many small, individually insignificant, competitors (i.e. perfect competition), the FCC should decide whether regulation is likely to achieve a better economic outcome than the market outcome which would occur under forbearance from rate regulation.

10. My econometric analysis and experience from North Carolina demonstrates that forbearance from regulation leads to a better outcome than regulation of cellular service. There will never be perfect competition among mobile radio firms because of limited spectrum. The FCC cannot change the current market structure given the constraints of limited spectrum. As such, the question for the FCC, therefore, becomes, "Are the cellular carriers operating as competitively as possible, given the constraints imposed by limited spectrum." The answer appears, from the market experience to be "Yes." The FCC can ask for no more. Furthermore, there is no evidence that continued regulation would lead to a better result. Indeed, it is regulation that keeps cellular service prices higher in a number of states such as California than would occur under competition.³

³ The California PUC has stated that cellular prices have not decreased as they had hoped after instituting regulation. California restricts cellular competition more than any other state. Indeed, California is the only state which forbids bundling of cellular equipment and service which the FCC has previously found is pro-competitive. Clearly, something is wrong with the California regulatory framework since competition has worked to bring lower prices in other states than California's extremely restrictive regulatory policy for cellular.

B. Competition is Increasing Among Mobile Service Providers

11. Competition is increasing significantly in mobile communications with the operation of Nextel's (formerly Fleet Call) ESMR networks. Nextel's original plan was to offer ESMR in six cities. Nextel has begun operation in Los Angeles and plans to begin operation in San Francisco and New York next year. Nextel has now expanded its plans, and has purchased sufficient ESMR spectrum from Motorola and other companies to be able to offer its services to about 70% of the population in the U.S.⁴ Nextel's proposed service areas covers about 180 million people and 45 of the top 50 U.S. SMSAs. Nextel has not encountered any difficulty in raising capital to finance these expansion plans. Indeed, the market capitalization of Nextel currently exceeds \$3.3 billion. Thus, Nextel will be a formidable competitor to cellular with its all digital network offering service in almost all areas of the U.S.⁵

12. Nextel is conspicuously absent from the Reseller's filing except via a mention that "at some future date" Nextel may have a competitive effect (p. 5) and a claim that ESMR companies might not be profitable for five years. (p. 5). The Resellers remarks here do not accord with reality. Nextel is currently in operation so that they cannot be wished away at the stroke of a lawyer's pen. Investors certainly expect Nextel to succeed as Nextel's stock has quadrupled since the initial public offering last year. The lack of expected profit for five years does not stop investors. Almost no cellular company made a profit in the first five years because of the requirements to build out a cellular network. Once network investment slows down profits will flow to investors to pay them back. However, during this entire period the cellular companies competed for customers. Nextel will do the same, thus increasing competition with cellular companies throughout the U.S.

⁴ McCaw, the largest cellular carrier, has service areas which cover about 25% of the U.S. population.

⁵ At least two other ESMR companies, Dialpage and Cencall, are also expanding rapidly to offer widespread geographical service in the near future.

C. The Resellers Provide No Evidence that Regulation will Help Consumers

13. The resellers put forward no evidence that regulation of mobile services would help consumers. Indeed, my econometric study demonstrates that cellular regulation harms consumers. Instead, the Resellers refer to a study by Prof. T. Hazlett, "Market Power in the Cellular Telephone Duopoly" which was submitted on behalf of Time Warner Telecommunications during the PCS proceedings in August 1993. However, Professor Hazlett has made a fundamental error in his economic analysis. His q-ratio evidence from which he infers that cellular companies have market power can be explained totally by the scarcity of spectrum for cellular telephony.⁶ Professor Hazlett never separates out the value of the spectrum scarcity from the exercise of market power, if any market power is currently being exercised.⁷

14. Furthermore, I have done a previous econometric study which refutes Hazlett's and the Reseller's claims that cellular companies are not competing. Previous econometric analysis that I have done demonstrates that monopoly conditions do not exist. Almost every elementary economics textbook demonstrates that a monopolist will always increase price so that the price elasticity exceeds one.⁸ Yet my econometric analysis has found the price elasticity in cellular markets to be far below one--more in the range of 0.3-0.4.⁹ The claim of the Resellers (p. 12) that cellular carriers are engaged

⁶ Professor Hazlett has also made a number of incorrect or questionable assumption about the cost of cellular networks and their expected economic life. See J. Haring and C. Jackson, "Errors in Hazlett's Analysis of Cellular Rents", prepared on behalf of Bell Atlantic, September 1993.

⁷ Indeed, according to Prof. Hazlett's reasoning when PCS spectrum is auctioned, the prices for the spectrum will prove that market power exists in PCS. The correct inference, however, is that the auction values reflect expected future rents to scarce spectrum.

⁸ I will use the absolute value of the price elasticity in the discussion which follows.

⁹ In the case of cable TV most econometric estimates find the price elasticities to be greater than 1.0 which is consistent with a lack of competition for cable providers.

in "monopolistic or anti-competitive practices" is refuted by actual cellular price and demand data. Thus, price data for cellular is consistent with competition among the two cellular providers in each MSA. No one can expect perfect competition, because of scarcity of spectrum, but the presence of imperfect competition does not imply that regulation will lead to a better outcome for consumers. Otherwise, the U.S. would regulate 99% of its industries since almost no industry is characterized by perfect competition.

15. The Resellers realize that PCS will soon increase competition in mobile services even more. However, they claim that regulation is needed in advance of PCS or cellular carriers might engage in predatory pricing. (pp. 8-9). This claim is not based on economic analysis. As all economists agree, predatory pricing cannot succeed unless barriers to entry exist and the new spectrum to be auctioned by the FCC guarantees that PCS entry will occur so that barriers to entry will not exist. Not only do economists believe that predatory pricing almost never happens, but the Courts have come to the same conclusion. The U.S. Supreme Court stated in 1986 that "predation is rarely attempted and even more rarely successful". In 1993 the Supreme Court again stated that predatory pricing is extremely unlikely to occur. For the Resellers to call for regulation based on business practices which are almost never encountered seems an extremely odd way for the FCC to make a policy determination.

16. The Resellers are asking for the institution of cost based rate of return regulation (ROR) for wholesale cellular service. They state: ...such [wholesale] rates must reflect only the cost (including a reasonable rate of return) to provide that service to the reseller. (p. 18) Institution of ROR regulation for a dynamically changing industry such as cellular would be an economic disaster. The FCC has recognized the adverse economic effects of ROR regulation for landline telecommunications and has instituted price cap

regulation.¹⁰ ROR regulation would retard technological advancement in cellular and lead to decreased consumer welfare.

D. Forbearance From Regulation of Wholesale Rates will Help Consumers and Mobile Services Satisfy the Criteria for FCC Forbearance

17. Forbearance from regulation of cellular prices is also consistent with the FCC criteria: (1) charges are just and reasonable and not unreasonably discriminatory (2) enforcement is not necessary for the protection of consumers (3) forbearance is in the public interest. First, I have discussed above why rates are just and reasonable because of the presence of competition among cellular carriers. Growth of cellular service has averaged 35-40% per year so that consumers have found cellular to be a valuable telecommunications service. Rates are also not unjustly discriminatory since the bundling of cellular equipment and services has led to lower consumer prices and has been found to be a pro-competitive practice by the FCC previously.¹¹

18. The next criterion, consumer protection, is also satisfied by cellular competition. Indeed, not only has competition protected consumers, it has led to lower prices than regulation of cellular. Thus, the last criterion is also satisfied--forbearance from regulation of wholesale cellular prices is also in the public interest. Experience to date has demonstrated that competition leads to lower cellular prices than regulation. A similar outcome is likely to occur with PCS which will greatly increase competition among mobile service providers. Thus forbearance from wholesale rate

¹⁰ The California PUC has stated a number of times that it does not favor cost based rate of return regulation for cellular service. Indeed, California ended cost based rate of return regulation for its landline telephone service regulation of Pacific Bell and GTEC in 1990.

¹¹ Both the FTC and the DOJ also entered comments which found that bundling of cellular equipment and services was pro-competitive and led to lower prices to consumers.

regulation for mobile services meets the FCC criteria and leads to a pro-consumer outcome.

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Price Regression for Top 40 Cellular Markets
 Left Hand Side Variable: Log of Price < 1

<u>Variable</u>	<u>Estimate</u>	<u>Standard Error</u>
Intercept	-0.070	1.428
Log of Income <2	0.295	0.159
Log of Population <3	-0.029	0.045
Log of Commute Time <4	0.538	0.221
Regulation	0.075	0.040
Wireline	0.008	0.033
Number of Observations	78	
Standard Error of Regression	0.148	
R Squared	0.288	

Notes: 1> Minimum monthly bill is based on 128 minutes of peak calling and 32 minutes of off-peak calling.

2> Log of per capita personal income. Source: Survey of Current Business, April 1992.

3> Log of population. Source: 1992 Statistical Abstract.

4> Mean commute time from home to work. Source: 1990 U.S. Census, Tape File 3c.

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Phi Beta Kappa
Marshall Scholar at Oxford, 1970-1972
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Fellow of Econometric Society, 1979.
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John Bates Clark Award of the American Economic Association, 1985
Jacob Marschak Lecture for the Econometric Society, 1988
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Associate Editor, Bell Journal of Economics, 1974-1983
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Associate Editor, Econometrica, 1978-1987
Reviewer, Mathematical Reviews, 1978-1980
American Editor, Review of Economic Studies, 1979-82
Associate Editor, Journal of Public Economics, 1982-
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Member of MIT Energy Laboratory Policy Research Group, 1973-
Research Associate, National Bureau of Economic Research, 1979-
Member, American Statistical Association Committee on Energy Statistics, 1981-1984
Special Witness (Master) for the Honorable John R. Bartels, U.S. District Court for the Eastern District of New York in Carter vs. Newsday, Inc., 1981-82
Member of Governor's Advisory Council (Massachusetts) for Revenue and Taxation, 1984-1992
Member, Committee on National Statistics, 1985-1990
Member, Committee to Revise U.S. Trade Statistics 1990-1992
Director, MIT Telecommunications Economics Research Program, 1988-
Board of Directors, Theseus Institute, France Telecom University, 1988-

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PUBLICATIONS cont.:

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- "Full-Information Estimators," in Kotz-Johnson, Encyclopedia of Statistical Science, vol. 3, 1983
- "Instrumental Variable Estimation," in Kotz-Johnson, Encyclopedia of Statistical Science, vol. 4, 1984

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"Econometric Models for Count Data with an Application to the Patents R&D Relationship," with Z. Griliches and B. Hall, NBER Working Paper, August 1981; Econometrica, 1984.

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"Seasonal Adjustment with Measurement Error Present," with M. Watson, May 1983; Journal of the American Statistical Association, 1985.

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